

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA08-341

DIANA LOU MATHEWS

APPELLANT

V.

ROBERT LEON MATHEWS

APPELLEE

Opinion Delivered January 14, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, SIXTH
DIVISION [NO. DR-2007-1030]

HONORABLE TIM FOX, JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

The parties were divorced after thirty-four years of marriage. The trial court divided the marital property equally and granted appellant wife alimony in the amount of \$1000 per month for four months. On appeal, she argues that the division of property was unequal and inequitable, and that the trial court's award of temporary alimony was inadequate. We affirm.

We review divorce cases *de novo* on the record. *Taylor v. Taylor*, 369 Ark. 31, 195 S.W.3d 898 (2007). In doing so, we defer to the superior position of the trial court to judge the credibility of witnesses, and we will not reverse a circuit court's finding of fact in a divorce case unless it is clearly erroneous. *Id.* A trial judge's unequal division of marital property will not be reversed unless it is clearly erroneous. *Cole v. Cole*, 89 Ark. App. 134, 201 S.W.3d 21 (2005). The decision to grant alimony lies within the sound discretion of the circuit court and will not be reversed on appeal absent an abuse of discretion. *Taylor v. Taylor, supra.*

Arkansas Code Annotated section 9-12-315 (Repl. 2002) provides that marital property is to be divided equally unless it would be inequitable to do so. *Cole v. Cole, supra*. If the property is divided unequally, then the court must give reasons for its division in the order. Ark. Code Ann. § 9-12-315(a)(1)(B) (Repl. 2008). The code also provides a list of factors the court should consider when making an unequal division. Ark. Code Ann. § 9-12-315(a)(1)(A)(i)-(ix) (Repl. 2008). This list is not exhaustive. *Cole v. Cole, supra*.

Appellant first asserts that the division of retirement benefits, awarding each party one-half of the other party's retirement, was not equal because of the effects of the Social Security Act on the different retirement plans. We do not address this issue because it is not properly before us. Although our review of divorce cases is *de novo*, we will not consider issues that were not raised before the trial court and ruled upon below. *Taylor v. Taylor, supra*. The appellant did not contend below that an equal division of the parties' retirement benefits would produce unequal results and, having failed to present the question to the trial court, cannot raise it for the first time on appeal.

Appellant next argues that the equal division of property by the trial court was so inequitable as to be clearly erroneous. We do not agree. The parties had been married for thirty-four years, and both of the parties were employed during the marriage. Both parties are high-school graduates; neither holds a college degree. Each party is currently employed and can look forward to substantial retirement benefits within the next ten years. Although appellee is now employed in Saudi Arabia and currently earns somewhat more than appellant, there is evidence that appellant was also employed in Saudi Arabia, earning approximately

150% of her base pay, but that she has voluntarily chosen to apply for civil service openings in the United States that will result in a reduction in pay. There was also evidence that appellee has a spotty work history and that his current civilian employment has not been as stable as appellant's long-term civil service employment. On this record, we cannot say that there was such a clear showing of disparity between age, health, and station in life of the parties; the occupation of the parties; amount and sources of income; vocational skills; or employability as to render the equal division of marital property clearly erroneous.

Finally, appellant argues that the trial court abused its discretion by not granting her a larger award of alimony. The decision whether to award alimony lies within the trial judge's sound discretion, and we will not reverse a trial judge's decision to award alimony absent an abuse of that discretion. *Cole v. Cole*, 82 Ark. App. 47, 110 S.W.3d 310 (2003). The purpose of alimony is to rectify economic imbalance in the earning power and the standard of living of the parties to a divorce in light of the particular facts of each case; the primary factors that a court should consider in determining whether to award alimony are the financial need of one spouse and the other spouse's ability to pay. *Id.* In fixing the amount of alimony, the courts consider many factors, including (1) the financial circumstances of both parties; (2) the couple's past standard of living; (3) the value of jointly-owned property; (4) the amount and nature of the parties' income, both current and anticipated; (5) the extent and nature of the resources and assets of each of the parties; (6) the amount of income of each that is spendable; (7) the earning ability and capacity of each party; (8) the property awarded or given to one of the parties, either by the court or the other party; (9) the disposition made of

the homestead or jointly-owned property; (10) the condition of health and medical needs of both husband and wife; (11) the duration of the marriage; and (12) the amount of child support. *Id.*

Here, there was an equal division of substantial marital assets and, as we noted with respect to the previous point, the situation of the parties with regard to these factors is not so disparate as to render the award of alimony made by the trial court so inadequate as to constitute an abuse of discretion.

Affirmed.

GLADWIN and GLOVER, JJ., agree.